
SENATE BILL 6212

State of Washington

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By Senators Moore, Anderson, Sheldon, Amondson, McAuliffe, Quigley, Oke, Bauer, Winsley, Roach and Ludwig

Read first time 01/17/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to the cost of rule making on small businesses;
2 amending RCW 19.85.020 and 34.05.320; reenacting and amending RCW
3 19.85.030 and 19.85.040; adding a new section to chapter 19.85 RCW;
4 adding a new section to chapter 43.31 RCW; repealing RCW 19.85.010,
5 19.85.060, and 19.85.080; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.85 RCW
8 to read as follows:

9 The legislature finds that administrative rules adopted by state
10 agencies can have a disproportionate impact on the state's small
11 businesses because of the size of those businesses. This
12 disproportionate impact reduces competition, innovation, and
13 employment, and threatens the very existence of some small businesses.
14 The legislature therefore enacts this Regulatory Fairness Act with the
15 intent of reducing the disproportionate impact of state administrative
16 rules on small business.

17 **Sec. 2.** RCW 19.85.020 and 1993 c 280 s 34 are each amended to read
18 as follows:

1 Unless the context clearly indicates otherwise, the definitions in
2 this section apply through this chapter.

3 (1) "Small business" means any business entity, including a sole
4 proprietorship, corporation, partnership, or other legal entity, that
5 is owned and operated independently from all other businesses, that has
6 the purpose of making a profit, and that has fifty or fewer employees.

7 (2) "Small business economic impact statement" means a statement
8 meeting the requirements of RCW 19.85.040 prepared by a state agency
9 pursuant to RCW 19.85.030.

10 (3) "Industry" means all of the businesses in this state in any one
11 (~~three-digit~~) four-digit standard industrial classification as
12 published by the United States department of commerce.

13 **Sec. 3.** RCW 19.85.030 and 1989 c 374 s 2 and 1989 c 175 s 72 are
14 each reenacted and amended to read as follows:

15 (~~In the adoption of any rule pursuant to RCW 34.05.320 that will
16 have an economic impact on more than twenty percent of all industries,
17 or more than ten percent of any one industry, the adopting agency:~~

18 ~~(1) Shall reduce the economic impact of the rule on small business
19 by doing one or more of the following when it is legal and feasible in
20 meeting the stated objective of the statutes which are the basis of the
21 proposed rule:~~

22 ~~(a) Establish differing compliance or reporting requirements or
23 timetables for small businesses;~~

24 ~~(b) Clarify, consolidate, or simplify the compliance and reporting
25 requirements under the rule for small businesses;~~

26 ~~(c) Establish performance rather than design standards;~~

27 ~~(d) Exempt small businesses from any or all requirements of the
28 rule;~~

29 ~~(2) Shall prepare a small business economic impact statement in
30 accordance with RCW 19.85.040 and file such statement with the code
31 reviser along with the notice required under RCW 34.05.320;~~

32 ~~(3))~~ (1) In the adoption of a rule under RCW 34.05.320, an agency
33 shall prepare a small business economic impact statement: (a) If the
34 proposed rule will impose more than minor costs on business; or (b) if
35 requested to do so by a majority vote of the joint administrative rules
36 review committee within thirty days after notice of the proposed rule
37 is published in the state register.

1 An agency shall prepare the small business economic impact
2 statement in accordance with RCW 19.85.040, and file it with the code
3 reviser along with the notice required under RCW 34.05.320. An agency
4 shall file a statement prepared at the request of the joint
5 administrative rules review committee with the code reviser upon its
6 completion before the adoption of the rule. An agency shall provide a
7 copy of the small business economic impact statement to any person
8 requesting it.

9 An agency may request assistance from the business assistance
10 center in the preparation of the small business economic impact
11 statement.

12 (2) The business assistance center shall adopt rules for
13 determining when a proposed rule will impose more than minor costs on
14 business. The business assistance center may review an agency
15 determination that a proposed rule will not impose more than minor
16 costs on business, and shall advise the joint administrative rules
17 review committee on disputes involving agency determinations under this
18 section.

19 (3) Based upon the extent of disproportionate impact on small
20 business identified in the statement prepared under RCW 19.85.040, the
21 agency shall, unless reasonable justification exists to do otherwise,
22 reduce the costs imposed by the rule on small businesses. Methods to
23 reduce the costs on small businesses may include, but are not limited
24 to:

25 (a) Reducing, modifying, or eliminating substantive regulatory
26 requirements;

27 (b) Establishing performance rather than design standards;

28 (c) Simplifying, reducing, or eliminating recordkeeping and
29 reporting requirements;

30 (d) Reducing the frequency of inspections;

31 (e) Delaying compliance timetables; or

32 (f) Reducing or modifying fine schedules for noncompliance.

33 **Sec. 4.** RCW 19.85.040 and 1989 c 374 s 3 and 1989 c 175 s 73 are
34 each reenacted and amended to read as follows:

35 (1) A small business economic impact statement must include a brief
36 description of the reporting, recordkeeping, and other compliance
37 requirements of the proposed rule, and the kinds of professional
38 services that a small business is likely to need in order to comply

1 with such requirements. (~~(A small business economic impact statement)~~)
2 It shall analyze(~~(, based on existing data,)~~) the costs of compliance
3 for businesses required to comply with the (~~(provisions of a)~~) proposed
4 rule (~~(adopted pursuant to RCW 34.05.320)~~), including costs of
5 equipment, supplies, labor, lost sales or revenue, and increased
6 administrative costs(~~(, and)~~). To determine whether the proposed rule
7 will have a disproportionate impact on small businesses, the impact
8 statement must compare (~~(to the greatest extent possible)~~) the cost of
9 compliance for small business with the cost of compliance for the ten
10 percent of (~~(firms which)~~) businesses that are the largest businesses
11 required to comply with the proposed (~~(new or amendatory)~~) rules(~~(-~~
12 ~~The small business economic impact statement shall use)~~) using one or
13 more of the following as a basis for comparing costs:

- 14 (~~(1)~~) (a) Cost per employee;
15 (~~(2)~~) (b) Cost per hour of labor; or
16 (~~(3)~~) (c) Cost per one hundred dollars of sales(~~(+~~
17 ~~(4) Any combination of (1), (2), or (3))~~).

18 (2) A small business economic impact statement must also include:

19 (a) A statement of the steps taken by the agency to reduce the
20 costs of the rule on small businesses as required by RCW 19.85.030(3),
21 or reasonable justification for not doing so, addressing, at a minimum,
22 each of the options listed in RCW 19.85.030(3);

23 (b) A description of how the agency will involve small businesses
24 in the development of the rule; and

25 (c) A list of industries that will be required to comply with the
26 rule.

27 (3) To obtain information for purposes of this section, an agency
28 may survey a representative sample of affected businesses or trade
29 associations and should, whenever possible, appoint a committee under
30 RCW 34.05.310(2) to assist in the accurate assessment of the costs of
31 a proposed rule, and the means to reduce the costs imposed on small
32 business.

33 **Sec. 5.** RCW 34.05.320 and 1992 c 197 s 8 are each amended to read
34 as follows:

35 (1) At least twenty days before the rule-making hearing at which
36 the agency receives public comment regarding adoption of a rule, the
37 agency shall cause notice of the hearing to be published in the state

1 register. The publication constitutes the proposal of a rule. The
2 notice shall include all of the following:

3 (a) A title, a description of the rule's purpose, and any other
4 information which may be of assistance in identifying the rule or its
5 purpose;

6 (b) Citations of the statutory authority for adopting the rule and
7 the specific statute the rule is intended to implement;

8 (c) A summary of the rule and a statement of the reasons supporting
9 the proposed action;

10 (d) The agency personnel, with their office location and telephone
11 number, who are responsible for the drafting, implementation, and
12 enforcement of the rule;

13 (e) The name of the person or organization, whether private,
14 public, or governmental, proposing the rule;

15 (f) Agency comments or recommendations, if any, regarding statutory
16 language, implementation, enforcement, and fiscal matters pertaining to
17 the rule;

18 (g) Whether the rule is necessary as the result of federal law or
19 federal or state court action, and if so, a copy of such law or court
20 decision shall be attached to the purpose statement;

21 (h) When, where, and how persons may present their views on the
22 proposed rule;

23 (i) The date on which the agency intends to adopt the rule;

24 (j) A short explanation of the rule, its purpose, and anticipated
25 effects, including in the case of a proposal that would modify existing
26 rules, a short description of the changes the proposal would make; and

27 (k) A copy of the small business economic impact statement(~~(, if~~
28 ~~applicable, and a statement of steps taken to minimize the economic~~
29 ~~impact in accordance with RCW 19.85.030)) prepared under chapter 19.85
30 RCW, or an explanation for why the agency did not prepare the
31 statement.~~

32 (2) Upon filing notice of the proposed rule with the code reviser,
33 the adopting agency shall have copies of the notice on file and
34 available for public inspection and shall forward three copies of the
35 notice to the rules review committee.

36 (3) No later than three days after its publication in the state
37 register, the agency shall cause a copy of the notice of proposed rule
38 adoption to be mailed to each person who has made a request to the

1 agency for a mailed copy of such notices. An agency may charge for the
2 actual cost of providing individual mailed copies of these notices.

3 (4) In addition to the notice required by subsections (1) and (2)
4 of this section, an institution of higher education shall cause the
5 notice to be published in the campus or standard newspaper of the
6 institution at least seven days before the rule-making hearing.

7 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.31 RCW
8 to read as follows:

9 To assist state agencies in reducing regulatory costs to small
10 business and to promote greater public participation in the rule-making
11 process, the business assistance center shall:

12 (1) Develop agency guidelines for the preparation of a small
13 business economic impact statement and compliance with chapter 19.85
14 RCW;

15 (2) Review and provide comments to agencies on draft or final small
16 business economic impact statements;

17 (3) Advise the joint administrative rules review committee on
18 whether an agency reasonably assessed the costs and impact of a
19 proposed rule and reduced the costs for small business as required by
20 chapter 19.85 RCW; and

21 (4) Organize and chair a state rules coordinating committee,
22 consisting of agency rules coordinators and interested members of the
23 public, to develop an education and training program for agency
24 personnel responsible for rule development and implementation. The
25 business assistance center shall submit recommendations to the
26 department of personnel for an administrative procedures training
27 program that is based on the sharing of interagency resources.

28 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each
29 repealed:

30 (1) RCW 19.85.010 and 1982 c 6 s 1;

31 (2) RCW 19.85.060 and 1989 c 374 s 5; and

32 (3) RCW 19.85.080 and 1992 c 197 s 2.

33 NEW SECTION. **Sec. 8.** This act takes effect July 1, 1994.

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